

**COURT OF COMMON PLEAS
FOR THE STATE OF DELAWARE
KENT COUNTY COURTHOUSE
DOVER, DELAWARE 19901
PHONE: (302) 739-4618**

**CHARLES W. WELCH, III
JUDGE**

April 30, 2010

Courtney Riordan, Esq.
110 Cullen Street
Dewey Beach, DE 19971

Nicole Hartman, Esq.
Deputy Attorney General
Department of Justice
102 W. Water Street
Dover, DE 19901

RE: State of Delaware v. Karen A Yoder
Cr. A. No.: 1003003247
K10-03-0935 thru 0939

Decision on Defendant's Motion to Dismiss

Dear Mr. Riordan and Ms. Hartman:

The Court is in receipt of the Pretrial Motion to Dismiss All Counts filed by the defendant in the above-referenced matter. The defendant, Karen A. Yoder, contends that the facts of this case do not support the charges of Cruelty or Neglect to Animals and Rabies Inoculation for Cats.

When deciding a motion to dismiss, the Court must look to the evidence proffered by the State, in a light most favorable to the State, to determine if an issue of fact exists. *State v. Jackson*, 2000 WL 33113958, at *3 (Del. Super.). An existing issue of fact precludes the Court from granting a defendant's motion to dismiss. *Id.*

Title 11, Section 1325(b)(2) of the Delaware Code, Cruelty to Animals, provides that a person is guilty of cruelty to animals when the person intentionally or recklessly subjects any animal in the person's custody to "cruel neglect." 11 *Del. C.* § 1325(b)(2) (2008). The definition of "cruel neglect" provides the following example:

[C]ruel neglect shall also include allowing an animal to live in unsanitary conditions, such as keeping an animal where the animal's own excrement is not removed from the animal's living area and/or other living conditions which are injurious to the animal's health.

11 *Del. C.* § 1325(a)(5).

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Title 3, Section 8204(b) of the Delaware Code, Vaccination of Cats, provides:

Any person owning a cat 6 months of age or older in this State shall have the cat vaccinated against rabies by a veterinarian. The owner of the cat will be responsible for keeping a valid rabies vaccination certificate in his possession for inspection by an animal control officer . . .

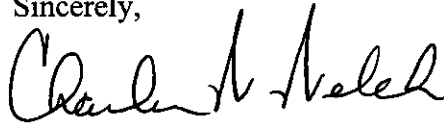
3 Del. C. § 8204(b) (2008).

In the Affidavit of Probable Cause, the animal control officer noted the strong smell of animal urine upon entering the home, and that “[a]nimal feces was found laying on the floors, counter tops and tables, [and] cats and dogs were found running all over.” The officer also noted that two rooms were filled with mounds of debris three to four feet high with “animal feces all over the rooms.” In addition, the officer describes two unsuccessful attempts to get proof of rabies vaccinations for the dogs and cats from the defendant.

The State has proffered evidence that the defendant kept the animals where their own excrement was not removed from their living area, and that she did not keep a valid rabies vaccination certificate in her possession for inspection by the animal control officer. This evidence, viewed in a light most favorable to the State, creates issues of fact that preclude granting the defendant’s motion to dismiss. The defendant’s motion is therefore denied.

IT IS SO ORDERED.

Sincerely,

A handwritten signature in black ink, appearing to read "Charles W. Welch, III". The signature is fluid and cursive, with the first name "Charles" being the most prominent.

Charles W. Welch, III

CWW:mek